

Dated: October 19, 2016.

**Gina McCarthy,**  
Administrator.

For the reasons stated in the preamble, EPA proposes to amend 40,CFR chapter I as set forth below:

#### **PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS**

■ 1. The authority citation for Part 241 continues to read as follows:

**Authority:** 42 U.S.C. 6903, 6912, 7429.

■ 2. Section 241.2 is amended by adding in alphabetical order the definitions “Copper naphthenate treated railroad ties”, “Copper naphthenate-borate treated railroad ties” and “Creosote-borate treated railroad ties” to read as follows:

##### **§ 241.2 Definitions.**

\* \* \* \* \*

*Copper naphthenate treated railroad ties* means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.

*Copper naphthenate-borate treated railroad ties* means railroad ties treated with copper naphthenate and borate made from disodium octaborate tetrahydrate.

*Creosote-borate treated railroad ties* means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate made from disodium octaborate tetrahydrate.

\* \* \* \* \*

■ 3. Section 241.4 is amended by adding paragraphs (a)(8) through (10) to read as follows:

##### **§ 241.4 Non-waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.**

\* \* \* \* \*

(a) \* \* \*

(8) Creosote-borate treated railroad ties, and mixtures of creosote, borate and copper naphthenate treated railroad ties that are processed (which must include at a minimum, metal removal and shredding or grinding) and then combusted in the following types of units:

(i) Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, and

(ii) Units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD that combust creosote-borate treated railroad ties and mixed creosote, borate and copper naphthenate treated railroad ties, and had been designed to burn biomass and fuel oil, but are modified (*e.g.*, oil

delivery mechanisms are removed) in order to use natural gas instead of fuel oil, as part of normal operations and not solely as part of start-up or shut-down operations. The creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties may continue to be combusted as product fuel under this subparagraph only if the following conditions are met, which are intended to ensure that such railroad ties are not being discarded:

(A) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties must be burned in existing (*i.e.*, commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers; and

(B) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties can comprise no more than 40 percent of the fuel that is used on an annual heat input basis.

(9) Copper naphthenate treated railroad ties that are processed (which must include at a minimum, metal removal and shredding or grinding) and then combusted in units designed to burn biomass or units designed to burn both biomass and fuel oil.

(10) Copper naphthenate-borate treated railroad ties that are processed (which must include at a minimum, metal removal and shredding or grinding) and then combusted in units designed to burn biomass or units designed to burn both biomass and fuel oil.

\* \* \* \* \*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS-R2-ES-2015-0148; 4500030113]**

**RIN 1018-BA86**

#### **Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Headwater Chub and a Distinct Population Segment of the Roundtail Chub**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the comment period reopening on our proposed rules to add the headwater

chub (*Gila nigra*) and the roundtail chub (*Gila robusta*) distinct population segment (DPS) as threatened species to the List of Endangered and Threatened Wildlife. We are taking this action based on significant new information regarding the species' taxonomic status as presented by the American Fisheries Society and the American Society of Ichthyologists and Herpetologists (AFS/ASIH) Joint Committee on the Names of Fishes. We are reopening the comment period for 45 days to provide the public additional time to review and consider our proposed rulemakings in light of this new information.

**DATES:** The comment period end date for the proposed rule that published at 80 FR 60754 on October 7, 2015, is December 16, 2016. We request that comments be submitted by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter the appropriate Docket No.: FWS-R2-ES-2015-0148 for the proposed threatened status for headwater chub and the roundtail chub distinct population segment. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2015-0148; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final determinations.

*Document availability:* The new scientific information described in this document is available at <http://www.regulations.gov> in Docket No. FWS-R2-ES-2015-0148.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office; telephone 602-242-0210; facsimile 602-242-2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800-877-8339).

**SUPPLEMENTARY INFORMATION:****Previous Federal Actions**

On October 7, 2015 (80 FR 60754), we published a proposed rule that the headwater chub and the lower Colorado River basin roundtail chub DPS are threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Section 4(b)(6)(A) of the Act requires that we make final listing determinations within 1 year of the proposed rule, except where, as in this instance, there is substantial disagreement regarding the sufficiency or accuracy of the available data, which allows for an additional 6 months. On August 15, 2016 (81 FR 54018), we announced a 6-month extension on the proposed rule's final determination due to substantial disagreement regarding the available data's sufficiency or accuracy, and reopened the comment period for 30 days. Accordingly, the deadline to finalize or withdraw the proposed rule is April 7, 2017. For a description of additional previous Federal actions concerning these species, please refer to the proposed listing rule (October 7, 2015; 80 FR 60754).

**Background**

In the proposed rule (October 7, 2015; 80 FR 60754), we evaluated headwater and roundtail chubs as separate species. However, commenters raised questions regarding the headwater and roundtail chubs' taxonomic distinctness, as related to one another and to the Gila chub (*Gila intermedia*). The Gila chub is listed as an endangered species (November 2, 2005; 70 FR 66664). Some scientists knowledgeable about the species contend that the three entities are not separate species.

For this reason, the Arizona Game and Fish Department requested that the AFS/ASIH evaluate the most recent literature associated with roundtail chub, headwater chub, and Gila chub taxonomy. The AFS/ASIH is recognized as the authority in establishing the taxonomic status of fish. The panel met in April 2016 and again in August 2016, and presented their conclusions in a final report to the Arizona Game and Fish Department on September 1, 2016 (Page *et al.* 2016; see Docket No. FWS-R2-ES-2015-0148 at <http://www.regulations.gov>). The AFS/ASIH review (Page *et al.* 2016) included published and unpublished studies and reports presented to them in April 2016, and a more recent, unpublished report by Copus *et al.* (2016), which was included as an appendix to Page *et al.* (2016). Based on the information

reviewed, the AFS/ASIH panel concluded that “no morphological or genetic data define populations of *Gila* in the lower Colorado River basin (which includes the Little Colorado River, Bill Williams River, Gila River, Verde River, and Salt River drainages) as members of more than one species” and “that the data available support recognition of only one species of *Gila*, the roundtail chub, *Gila robusta*” (Page *et al.* 2016). This new information could be of significant consequence in our final listing determination because our proposed rule reviewed these entities as separate species. Given the new information, we must now review the proposed entities' validity as recognized species. Further, this information was not previously included or considered in our proposed rulemaking or made available to the public. Therefore, we are reopening the comment period for 45 days to allow consideration of this new information, as well as any other aspect of the proposed rule, prior to finalizing our decision.

**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed headwater chub and roundtail chub DPS listing published in the **Federal Register** on October 7, 2015 (80 FR 60754). We will consider information and recommendations from all interested parties. We intend that any final action resulting from these proposals be as accurate as possible and based on the best available scientific and commercial data.

In considering the new information received from the AFS/ASIH, as well as the information provided in the proposed rule, we are particularly seeking comments considering:

- (a) Roundtail, headwater, and Gila chub genetics and taxonomy;
- (b) Roundtail, headwater, and Gila chubs' morphological characteristics;
- (c) Those topics previously noted in the October 7, 2015, proposed rule (see 80 FR 60754).

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in preparing our final determinations. Our final determinations will take into consideration all written comments and any additional information we received.

You may submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We request that you send

comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2015-0148. Copies of the proposed rule are also available at <http://www.fws.gov/southwest/es/arizona>.

**References Cited**

- Copus, J.M., Z. Foresman, W.L. Montgomery, B.W. Bowen, and R.J. Toonen. 2016. Revision of the *Gila robusta* (Teleostei, Cyprinidae) species complex: Morphological examination and molecular phylogenetics reveal a single species. *Report to the Joint ASIH-AFS Committee on Names of Fishes*.
- Page, L.M., C.C. Baldwin, H. Espinosa-Perez, C.R. Gilbert, K.E. Hartel, R.N. Lea, NE. Mandrak, J.J. Schmitter-Soto, and H.J. Walker. 2016. Final report of the AFS/ASIH Joint Committee on the Names of Fishes on the taxonomy of *Gila* in the Lower Colorado River basin of Arizona and New Mexico. Report to the Arizona Game and Fish Department. 4 pp.

**Author(s)**

The primary author(s) of this notice are the Arizona Ecological Services Field Office staff members.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 20, 2016.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

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